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IN THE

Supreme Court of the United States

OCTOBER TERM 1963

No. [redacted] 302

SAMUEL MOSLEY,

Petitioner,

against

CIA. MAR. ADRA., S.A.,

and

LIPSETT STEEL PRODUCTS, INC.,

Respondents.

ANSWER OF LIPSETT STEEL PRODUCTS, INC. TO THE CROSS-PETITION OF CIA. MAR. ADRA., S.A., FOR WRIT OF CERTIORARI

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and

VINCENT A. CATOGGIO,
of Counsel.

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Under no circumstances should Certiorari be granted to Cia. Mar. Adra. at the present juncture. The Court of Appeals held (Mosley, Pet. p. 31):

> "This disposition of Adra's appeal from the judgment in favor of Mosley makes it unnecessary for us to consider the issues raised by Lipsett's appeal from the judgment for indemnity in favor of Adra or by Adra's additional appeal from the trial court's refusal to amend its indemnity judgment to include an award for counsel fees."

Until the Court of Appeals passes on indemnity there is nothing which can be presented for review to this Court on that point, *Salem* v. *United States Lines*, 370 U. S. 31 at page 38.

The situation herein is different from that which obtained in *Crumady* v. *The Joachim Hendrik Fisser*, 357 U. S. 903, 358 U. S. 423, relied on by Cross-Petitioner. In the instant case we have two separate judgments entered in a Civil-Jury case wherein the jury rendered two separate general verdicts and did not have presented to it any special questions. In the *Crumady-Joachim Hendrik Fisser* case suit was in Admiralty and the stevedore-indemnitor had been impleaded under the 56th Admiralty Rule of this Court; a single decree was entered and in the trial before the Court without a jury the Court made findings of fact and conclusions of law in accordance with Rule 46½. The Supreme Court, under Article III, Section 2 of the Constitution is given Appellate jurisdiction both as to law and fact in Admiralty, but such power is not given in Civil-Jury cases.

Cia. Mar., Cross-Petitioner, says that it seeks Certiorari only in the event this Court should grant the Petition for Certiorari in No. 170 (formerly No. 1142) and that if Certiorari is denied in No. 170, then Cia. Mar. does not ask that its Cross-Petition be granted (p. 1). We submit that, since the Court of Appeals failed to consider many questions raised in that Court in connection with the judgment in favor of Mosley against Cia. Mar. Adra., S.A., even if Certiorari were to be granted to Mosley, his case would have to be remanded back to the Court of Appeals for further consideration, as was done in *Salem* v. *United States Lines*, 370 U. S. 31 at page 39. Until Mosley's claim finally is adjudicated, there is nothing to adjudicate as to indemnity.

CONCLUSION

The Cross-Petition of Cia. Mar. Adra., S.A., for Certiorari in all respects should be denied.

Dated: New York, N. Y., August 16th, 1963.

Respectfully submitted,

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Lipsett Steel Products, Inc.

VINCENT A. CATOGGIO,
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